

## Administrative Order



**Administrative Order No.:** 7-31

**Title:** Name-Clearing Hearings

**Ordered:** 12/4/1990

**Effective:** 12/4/1990

### **AUTHORITY:**

Section 4.02 of the Metropolitan Dade County Charter; Section 2-42 of the Code of Metropolitan Dade County.

### **POLICY:**

It is the responsibility of each County department to ensure that when a non-permanent County employee (e.g., probationary, exempt) is discharged or demoted for reasons that may stigmatize the employee's reputation, proper procedures are followed to give the employee an opportunity to clear his or her name. It should be noted that the purpose of such procedures is to afford the stigmatized employee an opportunity to respond to the charges, and not to appeal the disciplinary action or to gain reinstatement.

### **APPLICABILITY:**

This administrative order shall apply to all dismissals or demotions of non-permanent status employees. Permanent employees will continue to be covered by Administrative Order 7-3, Disciplinary Action.

### **WHEN HEARING MUST BE OFFERED:**

A name-clearing hearing must be offered whenever the following three conditions are met: (1) an employee is dismissed or demoted; (2) stigmatizing charges are placed in the employee's personnel file or are otherwise made public; and (3) the employee asserts that the charges are untrue.

### **DEFINITION OF STIGMATIZING CHARGES:**

A name-clearing hearing is not required every time a non-permanent employee is discharged or demoted. Such a hearing is required only when the reason for the discharge or demotion "stigmatizes" the employee's reputation, and the employee denies the truth of the charges. A charge is "stigmatizing" if it involves allegations of dishonesty or immorality which may damage the employee's reputation among

associates and impair his or her ability to obtain other employment. Examples of stigmatizing charges include falsifying records, misappropriating County property or funds, mental instability, and the commission of a crime or other immoral act. Charges of unsatisfactory performance, insubordination, absenteeism, or other job performance-related problems do not constitute stigmatizing charges and therefore do not require a hearing under this administrative order. The layoff of an employee for the lack of work and the end of a temporary work assignment also do not require hearings under this administrative order.

## **NOTICE TO EMPLOYEES:**

When a non-permanent employee is demoted or discharged for a stigmatizing reason and that reason is publicized, the department will inform the employee in writing that a name-clearing hearing will be arranged if the employee requests it. The employee should sign for his or her copy of the written notification, if presented personally, or the notification letter should be sent to the employee by certified mail. A copy shall be provided to the Employee Mediation Coordinator. The employee shall be notified that the purpose of the hearing is not to appeal the disciplinary action or to gain reinstatement, but to provide the employee an opportunity to respond to the stigmatizing charge(s). The department should advise the employee that the request for a hearing must be filed with the Metro-Dade Employee Mediation Coordinator within fourteen (14) calendar days of being notified of the right to a hearing. The failure of an employee to request this hearing on a timely basis shall be considered as a waiver of the rights under this administrative order.

## **THE HEARING:**

Upon receipt of an employee's timely request for a name-clearing hearing, the Employee Mediation Coordinator shall schedule and conduct a hearing, normally within sixty (60) calendar days. The Employee Mediation Coordinator shall preside as the hearing officer for these hearings. The department may be required to prepare a written description of the charges that are to be considered at the hearing, and the employee may be required to submit a written response to the charges.

The conduct of the hearing shall be informal. The employee should be allowed to present testimony and documents showing that the charges are untrue. The department director may designate a department official to present evidence in support of the charges. The Employee Mediation Coordinator may order any County employee who has relevant information about the charges to testify at the hearing. Employees who refuse to testify may be subject to discipline by their supervisors. When appropriate, the department will also make good faith efforts to obtain relevant testimony from non-County employees. In addition to accepting live testimony, the hearing officer may also accept written statements and other documents which are relevant to the proceeding. The Hearing Officer shall ensure that minutes of the hearing are recorded.

**CONCLUSION OF THE HEARING:**

Within thirty (30) calendar days after the hearing, the hearing officer is to issue a written report summarizing the evidence presented. The officer's report shall clearly state that the report's conclusions have no bearing on the employee's status as a County employee. The Hearing Officer's report shall be final, binding and not subject to further review or appeal. Copies of the Hearing Officer's report shall be furnished to the respective department and placed in the employee's personnel file.

This Administrative Order is hereby submitted to the Board of County Commissioners of Dade County, Florida.

Joaquin G. Aviñó, P.E., P.L.S.

County Manager